

programming distributor subject to this section shall place in service new navigation devices for sale, lease, or use that perform both conditional access and other functions in a single integrated device.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 041130335-5154-02; I.D. 112404B]

RIN 0648-AS17

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a regulation to implement the annual harvest guideline for Pacific sardine in the U.S. exclusive economic zone off the Pacific coast for the fishing season January 1, 2005, through December 31, 2005. This action adopts a harvest guideline and initial subarea allocations for Pacific sardine off the Pacific coast that have been calculated according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP).

DATES: Effective July 22, 2005.

ADDRESSES: The report Assessment of the Pacific Sardine Stock for U.S. Management in 2005 may be obtained from Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802. An environmental assessment/regulatory impact review may be obtained at this same address.

FOR FURTHER INFORMATION CONTACT: Tonya Wick, Southwest Region, NMFS, 562-980-4036.

SUPPLEMENTARY INFORMATION: The FMP, which was implemented by publication of the final rule in the *Federal Register* on December 15, 1999 (64 FR 69888), divides management unit species into two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific

sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

At a public meeting held each year, the biomass for each actively managed species is reviewed by the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (Team). The biomass, harvest guideline, and status of the fisheries are then reviewed at a public meeting of the Council's CPS Advisory Subpanel (Subpanel). This information is also reviewed by the Council's Scientific and Statistical Committee (SSC). The Council reviews reports from the Team, Subpanel, and SSC and after providing time for public comment, makes its recommendation to NMFS. The annual harvest guideline and season structure are published by NMFS in the *Federal Register* as soon as practicable before the beginning of the appropriate fishing season. The Pacific sardine season begins on January 1 and ends on December 31 of each year.

Team and Subpanel meetings took place at the Southwest Regional Office in Long Beach, California, on September 28, 29, and 30, 2004 (69 FR 55144, September 13, 2004). The Council reviewed the report at its November, 2004, meeting in Portland, Oregon, when it also heard comments from its advisory bodies and the public.

Based on a biomass estimate of 1,193,515 metric tons (mt) (in U.S. and Mexican waters) and using the FMP formula, NMFS calculated a harvest guideline of 136,179 mt for Pacific sardine in U.S. waters for January 1, 2005, through December 31, 2005. The biomass estimate is nearly 10 percent higher than last year's estimate because the estimate of 2004 recruitment (age 0) was at a high level, and these recruits entered the fishable biomass (ages 1+) in 2005.

Under the FMP, the harvest guideline is allocated one-third for Subarea A, which is north of 39°00' N. lat. (Pt. Arena, California) to the Canadian border, and two-thirds for Subarea B, which is south of 39° 00' N. lat. to the Mexican border. Under this final rule, the northern allocation for 2005 would be 45,393 mt, and the southern allocation would be 90,786 mt. In 2004, the northern allocation was 40,916 mt, and the southern allocation was 81,831 mt.

An incidental landing allowance of Pacific sardine in landings of other CPS fisheries would become effective if the harvest guideline for Pacific sardine is

reached and the fishery closed. An incidental landing allowance of Pacific sardine up to 45 percent by weight of any landing of CPS is authorized by the FMP; therefore, this is the incidental landing allowance for 2005. An incidental landing allowance prevents fishermen from being cited for a violation when Pacific sardine are landed with other CPS, and it minimizes wasteful bycatch of Pacific sardine if they are inadvertently caught while fishing for other CPS. An incidental landing allowance also helps to reduce processing costs by reducing the amount of time necessary to sort Pacific sardine that are landed with other CPS.

The Pacific sardine population was estimated using a newly modified version of the integrated stock assessment model called Age-structured Assessment Program (ASAP). This new ASAP model was recommended by the Coastal Pelagic Species Stock Assessment Review panel held in June 2004 in La Jolla, California. It replaces the old Catch-at-Age-Analysis of Sardine-Two Area Model (CANSAR-TAM, a forward-casting, age-structured analysis) used in previous years. ASAP is a flexible forward-simulation that allows for the efficient and reliable estimation of a large number of parameters. ASAP uses fishery dependent and fishery independent data to obtain annual estimates of sardine abundance, year-class strength, and age-specific fishing mortality for 1983 through 2004. The ASAP model allows one to account for the expansion of the Pacific sardine stock northward to include waters off the northwest Pacific coast and for the incorporation of data from the Mexican sardine fishery. Information on the fishery and the stock assessment is found in the report *Assessment of the Pacific Sardine Stock for U.S. Management in 2005* (see **ADDRESSES**).

The formula in the FMP uses the following factors to determine the harvest guideline:

1. *The biomass of age one sardine and above.* For 2005, this estimate is 1,193,515 mt.
2. *The cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.
3. *The portion of the sardine biomass that is in U.S. waters.* For 2005, this estimate is 87 percent, based on the average of larval distribution obtained from scientific cruises and on the distribution of the resource obtained from logbooks of fish-spotters.
4. *The harvest fraction.* This is the percentage of the biomass above 150,000

mt that may be harvested. The fraction used varies (5–15 percent) with current ocean temperatures. A higher fraction is used for warmer ocean temperatures, which favor the production of Pacific sardine, and a lower fraction is used for cooler temperatures. For 2005, the fraction was 15 percent based on three seasons of sea surface temperature at Scripps Pier, California.

As indicated above, the harvest guideline for U.S. waters is allocated one-third (45,393 mt) to Subarea A and two-thirds (90,786 mt) to Subarea B.

A proposed rule for the specification of the harvest guideline and initial allocations was published on December 8, 2004 (69 FR70973). The public comment period ended on December 23, 2004. NMFS received one comment that generally criticized commercial fishing rules suggesting a decrease in the harvest guideline by 50 percent and that overfishing is occurring. This comment

did not yield information that would provide a basis for changing the 2005 Pacific sardine harvest guideline as the Pacific sardine stock is currently defined as not being overfished, there is no overfishing occurring, and the spawning stock biomass appears to be healthy based on the most recent stock assessment completed in 2004. Thus NMFS has decided not to change the final rule based on this one comment.

Classification

The Assistant Administrator for Fisheries determined that implementing the harvest guideline is necessary for the conservation and management of the Pacific sardine fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding the economic impacts of this rule. As a result, a regulatory flexibility analysis was not prepared.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 16, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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